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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	:	Before the Examiner:
John F. Bisceglia	:	Steelman, Mary J.
Serial No.: 10/015,855	:	Group Art Unit: 2191
Filed: December 13, 2001	:	
	:	IBM Corporation
Title: A DEVELOPMENT	:	Intellectual Property Law
ENVIRONMENT FOR BUILDING	:	11400 Burnet Road
SOFTWARE APPLICATIONS THAT	:	Austin, Texas 78758
MIMIC THE TARGET ENVIRONMENT	:	

REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. §41.52

Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Request for Reconsideration is being submitted in response to the Board's Decision for Application No. 10/015,855 (Appeal No. 2007-3447) with a mailing date of December 17, 2007.

REQUEST FOR RECONSIDERATION

This is a request to Administrative Patent Judges Howard Blankenship, St. John Courtenay III, a former patent Examiner who has examined many applications for assignee, and Stephen C. Siu to reconsider their ruling sustaining the Examiner's final rejection of claims 1-47 for the above-indicated case. Appellant believes that if the Administrative Patent Judges reconsider Appellant's arguments that the Administrative Patent Judges would render a different ruling. Appellant kindly requests the Administrative Patent Judges to review the material below which highlights the main reasons why Appellant believes that a reconsideration of the ruling is justified.

- A. Board is misguided in relying upon *In re Gulack* and M.P.E.P. §2106.01 in concluding that several limitations of claims 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 40, 41, 42, 43, 44, 45, 46 and 47 contain non-functional descriptive material and therefore such limitations can be ignored.

The Board throughout its opinion asserted that several claim limitations in claims 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 40, 41, 42, 43, 44, 45, 46 and 47 contain non-functional descriptive material and therefore is given no patentable weight. Board's Decision, pages 7-8, 12-13 and 15-22. The Board relies upon M.P.E.P. §2106.01 and *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) in support for the assertion that the above-cited claims contain non-functional descriptive material. Appellant respectfully traverses.

M.P.E.P. §2106.01 is directed to computer-related non-statutory subject matter. M.P.E.P. §2106.01 defines "non-functional descriptive material" as including but not limited to music, literary works, and a compilation or mere arrangement of data. M.P.E.P. §2106.01 continues by stating that when non-functional descriptive material is recorded on some computer-readable medium, in a computer or on an

electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. M.P.E.P. §2106.01 further states that merely claiming non-functional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, does not make it statutory. Further, M.P.E.P. §2106.01 states that non-statutory music is not a computer component, and it does not become statutory by merely recording it on a compact disk. Protection for this of work is provided under the copyright law.

The limitations in claims 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 40, 41, 42, 43, 44, 45, 46 and 47 that the Board claims to be non-functional descriptive material are not related to music, literary works, a compilation or mere arrangement of data. Neither are these claim limitations abstract ideas. Neither are these claim limitations protectable under copyright law. These limitations are not non-functional descriptive material. For example, how is "inserting information on a status of the development environment in a report; and issuing the report to a customer," as recited in claims 4, 18, 29 and 40, related to music, literary works, a mere arrangement of data, or an abstract idea? How is "wherein said control information comprises one or more of the following: a statement of work, a profile of a server implemented in said development environment, a profile of a network component implemented in said development environment, and a profile of said development environment," as recited in claim 5, 19, 30 and 41, related to music, literary works, a mere arrangement of data, or an abstract idea? How is "wherein said statement of work comprises standards for hardware components and software components in said target environment, wherein said statement of work comprises contract conditions," as recited in claims 6, 20, 31 and 42, related to music, literary works, a mere arrangement of data, or an abstract idea? How is "wherein said server profile comprises a description of said server implemented in said development environment," as recited in claims 7, 21, 32 and 43, related to music, literary works, a mere arrangement of data, or an abstract idea? How is "wherein said network component profile comprises a description of said

network component implemented in said development environment," as recited in claims 8, 22, 33 and 44, related to music, literary works, a mere arrangement of data, or an abstract idea? How is "wherein said profile of said development environment comprises a description of said hardware components and said software components of said development environment, wherein said profile of said development environment comprises a description of said software application to be developed," as recited in claims 9, 23, 34 and 45, related to music, literary works, a mere arrangement of data, or an abstract idea? How is "wherein said processing said first request comprises updating a profile of a server implemented in said development environment, wherein said server profile comprises a description of said server implemented in said development environment" as recited in claim 10 related to music, literary works, a mere arrangement of data, or an abstract idea? How is "wherein said processing said first request comprises updating a profile of a network component implemented in said development environment, wherein said network component profile comprises a description of said network component implemented in said development environment" as recited in claim 11 related to music, literary works, a mere arrangement of data, or an abstract idea? How is "wherein said processing said first request comprises updating profile of said development environment, wherein said profile of said development environment comprises a description of said hardware components and said software components of said development environment, wherein said profile of said development environment comprises a description of said software application to be developed" as recited in claim 12 related to music, literary works, a mere arrangement of data, or an abstract idea? How is "receiving a second request, wherein said second request comprises a request to implement a change in said development environment" as recited in claims 13, 24, 35 and 46, related to music, literary works, a mere arrangement of data, or an abstract idea? How is "receiving a second request, wherein said second request comprises a request to correct a problem detected in said development environment"

as recited in claims 14, 25, 36 and 47, related to music, literary works, a mere arrangement of data, or an abstract idea?

The Board explained its reasoning only in connection with claim 1, which we discuss hereinbelow. The Board asserts that the "first request" and "control information" in claims 1, 15, 26 and 37 to be non-functional descriptive material since the other steps in these claims do not change their functions based upon the content of the first request or the control information. Board's Decision, page 8. The Board concludes that the first request and the control information bear no functional relationship to the substrate. *Id.*

The terms "first request" and "control information" are functional in that other claim limitations do change their functions based on the content of the first request and control information. The first request is reviewed in accordance with the control information for managing the first request, as recited in claim 1. The control information is used to determine how to handle the request. See page 15, lines 10-16 of Appellant's Specification which discusses that the control information (e.g., an environment profile 317, a server profile 315, a network component profile 316 and/or the conditions stated in a statement of work 314 as discussed on page 15, lines 10-13 of Appellant's Specification) may be used by sub-process 302 to manage how to handle the request. One such resource is the environment support team 327 which may refer to the developer or team of developers assigned to create and manage the development environment in question. See page 15, lines 16-19 of Appellant's Specification. Further, when a request is reviewed, the request may be rejected, held, returned to the requester or assigned. See page 15, lines 8-9 of Appellant's Specification.

Additionally, the Board has not explained exactly what "bear no functional relationship to the substrate" means but Appellant believes this is derived from the statement in M.P.E.P. §2106.01 which states that "USPTO personnel need not give patentable weight to printed matter absent a new and unobvious functional

relationship between the printed matter and the substrate." There are no limitations directed to printed matter. There are no limitations that can be interpreted as "printed matter" such as a type of work that is protectable under copyright law as discussed in M.P.E.P. §2106.01.

Further, the Board cited to *In re Lowry* in support of the assertion that the Examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. Board's Decision, page 7. The Federal Circuit in *In re Lowry* stated that the Board erroneously extended a printed matter rejection under sections 102 and 103 to a new field in this case, which involves information stored in a memory. *In re Lowry*, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). The Federal Circuit stated that this case was distinguishable from the printed matter cases because the printed matter cases only "dealt with claims defining as the invention certain novel arrangements of printed lines or characters, useful and intelligible only to the human mind" and have no factual relevance where "the invention as defined by the claims requires that the information be processed not by the mind but by a machine, the computer." *Id.* Clearly in the present case, the claims are not novel arrangements of printed lines or characters, useful and intelligible only to the human mind. Instead, the claims require the information to be processed by a machine, the computer. Hence, the citing of *In re Lowry* does not support the Board's assertions or conclusions that claims 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 40, 41, 42, 43, 44, 45, 46 and 47 contain non-functional descriptive material and therefore are given no patentable weight.

Appellant notes that the Examiner did not reject any claims in the application under the rationale of "non-functional descriptive material." This type of rejection has been first promulgated by the Board. Appellant respectfully requests the Board to carefully review Appellant's arguments in connection with the rejections under the rationale of "non-functional descriptive material" as this is Appellant's first opportunity to respond.

B. Claims 1, 15, 26 and 37 are not anticipated by Bowman-Amuah

As stated above, the Board equates the limitations of "first request comprising a description of the development environment" and "control information" in claim 1 to constitute "non-functional descriptive material." Board's Decision, pages 6-7. However, as indicated above, the limitation of "reviewing said first request in accordance with control information for managing said first request" in claim 1 does change its function based upon content of the control information. The control information is used to determine how to handle the request. See page 15, lines 10-16 of Appellant's Specification which discusses that the control information (e.g., an environment profile 317, a server profile 315, a network component profile 316 and/or the conditions stated in a statement of work 314 as discussed on page 15, lines 10-13 of Appellant's Specification) may be used by sub-process 302 to manage how to handle the request.

The Board then concludes that claim 1 requires no more than receiving data, reviewing the data in accordance with other data, assigning and processing the data, and establishing and monitoring a development environment upon processing the data. Board's Decision, page 8. However, the Board is ignoring claim limitations. Claim 1 recites limitations such as "assigning said first request to one or more developers," "monitoring said development environment asynchronously for violations of conditions." Why are these elements being ignored? Caselaw is replete with cases that stand for the proposition that the Examiner cannot ignore claim language. See, e.g., *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970).

As discussed in Appellant's Second Appeal Brief, the Examiner relies upon column 21, line 65 and column 49, lines 6-10 of Bowman-Amuah as teaching "assigning said first request to one or more developers." Second Appeal Brief, page 8. Bowman-Amuah instead teaches assigning ownership for the contents of each folder (column 21, line 65) and providing the ability to define, manage and execute

automated business processes through an electronic representation of the process, both in terms of what has to be done, and by whom (column 49, lines 6-10). Second Appeal Brief, page 8. There is no language that discloses assigning a first request to one or more developers. Hence, claims 1, 15, 26 and 37 are anticipated under 35 U.S.C. §102(e).

However, based on Appellant's understanding of the Board's Decision, the Board expressed throughout its opinion that the Board feels that Appellant did not provide arguments as to the differences. Board's Decision, page 6. Appellant is confused. First, the Examiner bears the initial burden of establishing a *prima facie* case of anticipation. See *In re King*, 801 F.2d 1324, 1327, 231 U.S.P.Q. 136, 138-39 (Fed. Cir. 1986); *In re Wilder*, 429 F.2d 447, 450, 166 U.S.P.Q. 545, 548 (C.C.P.A. 1970). The Examiner in this case cited to several passages in Bowman-Amuah as allegedly disclosing each of the limitations in claims 1-47. Appellant indicated to the Board those cited passages that did not disclose the alleged limitations in Appellant's Second Appeal Brief. There is no language in the cited passages that taught these particular limitations. The Examiner did not provide any basis in fact and/or technical reasoning and/or extrinsic evidence as to how these passages taught these limitations. See *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990); *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999); *In re Cortright*, 165 F.3d 1353, 1359, 49 U.S.P.Q.2d 1464, 1468 (Fed. Cir. 1999); M.P.E.P. §2111. Instead, the Examiner cited to passages that do not disclose the indicated claimed limitations. The Board asserts that Appellant failed to provide arguments as to the differences despite the fact that Appellant indicated which limitations were not disclosed in the cited passages, such as by underlining the particular aspects of the limitations that were not specifically disclosed. The burden is on the Examiner and not on Appellant to first construe the claims and then provide evidence as to how the cited passages in the cited art disclose the claim limitations. The Examiner never did that. Neither did the Board construe the claims, as required by the Federal Circuit, and provide reasons as to why the construed claims are disclosed in the passages cited by the Examiner. For

example, the Board's opinion did not construe the scope of "assigning the first request to one or more developers" as recited in claim 1. Instead, the Board appears to shift the burden to the Appellant, without the Examiner establishing a *pima facie* case of anticipation, in providing evidence as to why the claims should be allowed. Even though this is inappropriate, Appellant believed they met that burden by pointing out which limitations were not disclosed in the cited passages.

C. Claims 2, 16, 27 and 38 are not anticipated by Bowman-Amuah

As discussed in Appellant's Second Appeal Brief, the Examiner cites column 21, line 4 of Bowman-Amuah as disclosing "notifying a developer of said violated condition" as recited in claim 2 and similarly in claims 16, 27 and 38. Appellant's Second Appeal Brief, page 11. Appellant pointed out that Bowman-Amuah taught developing standards which can form the basis of a program to report on detected deviations from these standards. *Id.* Appellant further pointed out that the cited passages do not disclose notifying a developer of a violated condition. *Id.* The Board did not address as to how Bowman-Amuah taught "notifying a developer." Board's Decision, page 9. Instead, the Board states that they find "detected deviations from standards" to be equivalent to "notifying a developer of a violated condition." *Id.* What is the rationale basis for this conclusion? There is no language in Bowman-Amuah that discloses notifying a developer of a violated condition. Instead, as pointed out by Appellant, the cited passage deals with detailed, project-specific standards that form the basis for a repository validation program, which can run through the entire repository and report on detected deviations from standards. Appellant's Second Appeal Brief, page 11. Why can the Examiner ignore claim limitations, namely, "notifying a developer?" Thus, Bowman-Amuah does not disclose all of the limitations of claims 2, 16, 27 and 38, and thus Bowman-Amuah does not anticipate claims 2, 16, 27 and 38. M.P.E.P. §2131.

D. Claims 3, 17, 28 and 39 are not anticipated by Bowman-Amuah

As discussed in Appellant's Second Appeal Brief, the Examiner cites column 21, lines 22-30 and column 35, lines 45-47 of Bowman as disclosing "inserting information of said violation of said condition in a report; and issuing said report to a customer " as recited in claim 3 and similarly in claims 17, 28 and 39. Appellant's Second Appeal Brief, pages 11-12. Appellant pointed out that Bowman-Amuah taught that the repository management team performs certain analyses repeatedly and that when supporting specific kinds of repository analysis, the repository management team can provide custom reports or ad hoc queries that satisfy particular needs. *Id.* at page 12. Appellant pointed out that the cited passages do not disclose inserting information of a violation of a condition in a report. *Id.* Where is this limitation disclosed? There is no language in Bowman-Amuah that discusses anything about inserting information of a violation of a condition in a report. Neither is there any discussion about issuing the report to a customer. *Id.* Where is there language in Bowman-Amuah that discusses issuing a report to a customer? The Board fails to discuss the limitation of issuing the report to a customer. Thus, Bowman-Amuah does not disclose all of the limitations of claims 3, 17, 28 and 39, and thus Bowman-Amuah does not anticipate claims 3, 17, 28 and 39. M.P.E.P. §2131.

E. Claims 7, 21, 32 and 43 are not anticipated by Bowman.

As discussed in Appellant's Second Appeal Brief, the Examiner cites column 19, line 14 – column 22, line 28 of Bowman as disclosing "wherein said server profile comprises a description of said server implemented in said development environment" as recited in claim 7 and similarly in claims 21, 32 and 43. Appellant's Second Appeal Brief, page 15. Appellant pointed out that Bowman-Amuah taught activities of the repository management. *Id.* Appellant pointed out that the cited passage does not disclose a server profile that includes a description of the server implemented in the development environment. What is the rationale for concluding that the teaching of activities of a repository management necessarily entails the teaching of a server profile that includes a description of the server implemented in the development environment? The Board does not provide any reasoning. Further,

where is this limitation disclosed? Appellant believes the Examiner and the Board are ignoring claim language. Thus, Bowman-Amuah does not disclose all of the limitations of claims 7, 21, 32 and 43, and thus Bowman-Amuah does not anticipate claims 7, 21, 32 and 43. M.P.E.P. §2131.

F. Claims 8, 22, 33 and 44 are not anticipated by Bowman-Amuah.

As discussed in Appellant's Second Appeal Brief, the Examiner cites column 2, lines 17-21; column 14, line 40 and column 16, line 24 of Bowman-Amuah as disclosing "wherein said network component profile comprises a description of said network component implemented in said development environment" as recited in claim 8 and similarly in claims 22, 33 and 44. Appellant's Second Appeal Brief, page 15. Appellant pointed out that Bowman-Amuah taught an environment management team. *Id.* at page 16. Appellant pointed out that the cited passages do not disclose a network component profile that includes a description of a network component implemented in the development environment. What is the rationale for concluding that the teaching of an environment management team necessarily entails the teaching of a network component profile that includes a description of a network component implemented in the development environment? The Board does not provide any reasoning. Further, where is this limitation disclosed? Appellant believes the Examiner and the Board are ignoring claim language. Thus, Bowman-Amuah does not disclose all of the limitations of claims 8, 22, 33 and 44, and thus Bowman-Amuah does not anticipate claims 8, 22, 33 and 44. M.P.E.P. §2131.

G. Claims 9, 23, 34 and 45 are not anticipated by Bowman-Amuah.

As discussed in Appellant's Second Appeal Brief, the Examiner cites column 72, lines 5-26 of Bowman-Amuah as disclosing "wherein said profile of said development environment comprises a description of said hardware components and said software components of said development environment, wherein said profile of said development environment comprises a description of said software application to be developed" as recited in claim 9 and similarly in claims 23, 34 and 45. Appellant's

Second Appeal Brief, page 16. Appellant pointed out that Bowman-Amuah taught a client/server system, each of these components must be individually defined. *Id.* at page 17. Appellant pointed out that the cited passages do not disclose a profile of a development environment that comprises a description of the hardware components and the software components of the development environment. *Id.* Appellant further pointed out that neither is there any language in the cited passage that discloses a profile of the development environment that comprises a description of the software application to be developed. *Id.*

What is the rationale for concluding that the teaching of a client/server system, where each of these components must be individually defined, necessarily entails the teaching of a profile of a development environment that comprises a description of the hardware components and the software components of the development environment? Further, what is the rationale for concluding that the teaching of a client/server system, where each of these components must be individually defined, necessarily entails the teaching of a profile of the development environment that comprises a description of the software application to be developed? The Board does not provide any reasoning. Further, where are these limitations disclosed in Bowman-Amuah? Appellant believes the Examiner and the Board are ignoring claim language. Thus, Bowman-Amuah does not disclose all of the limitations of claims 9, 23, 34 and 45, and thus Bowman-Amuah does not anticipate claims 9, 23, 34 and 45. M.P.E.P. §2131.

H. Claim 10 is not anticipated by Bowman-Amuah.

As discussed in Appellant's Second Appeal Brief, the Examiner cites Figure 4 and column 14, lines 40-58 of Bowman-Amuah as disclosing "wherein said processing said first request comprises updating a profile of a server implemented in said development environment, wherein said server profile comprises a description of said server implemented in said development environment" as recited in claim 10. Appellant's Second Appeal Brief, page 17. Appellant pointed out that Bowman-

Amuah taught that just as a business application requires support and system users require service, the development environment requires system operations daily, and developers require ongoing support in order to use the environment effectively. *Id.* Appellant pointed out that the cited passage does not disclose that the processing of the first request comprises updating a profile of a server implemented in the development environment. *Id.* Appellant further pointed out that neither is there any language in the cited passage that discloses that the server profile comprises a description of the server implemented in the development environment. *Id.* The Board states that it equates "change control" with "governs what software component is changed." Board's Decision, page 18. What is the rational connection between this statement and the claimed limitation of "updating a profile a server implemented in the development environment" or "a server profile that comprises a description of the server implemented in the development environment?" These claim limitations are not simply directed to updating data. Appellant believes the Examiner and the Board are ignoring claim language. Thus, Bowman-Amuah does not disclose all of the limitations of claim 10, and thus Bowman-Amuah does not anticipate claim 10. M.P.E.P. §2131.

I. Claim 11 is not anticipated by Bowman-Amuah.

As discussed in Appellant's Second Appeal Brief, the Examiner cites Figure 4 and column 14, lines 40-58 of Bowman-Amuah as disclosing "wherein said processing said first request comprises updating a profile of a network component implemented in said development environment, wherein said network component profile comprises a description of said network component implemented in said development environment" as recited in claim 11. Appellant's Second Appeal Brief, page 18. Appellant pointed out that Bowman-Amuah taught that just as a business application requires support and system users require service, the development environment requires system operations daily, and developers require ongoing support in order to use the environment effectively. *Id.* Appellant pointed out that the cited passage does not disclose that the processing of the first request comprises

updating a profile of a network component implemented in the development environment. *Id.* Appellant further pointed out that neither is there any language in the cited passage that discloses that the network component profile comprises a description of the network component implemented in the development environment. *Id.* The Board states that it equates "change control" with "governs what software component is changed." Board's Decision, page 19. What is the rational connection between this statement and the claimed limitation of "updating a profile of a network component implemented in the development environment" or "a network component profile that comprises a description of the network component implemented in the development environment?" These claim limitations are not simply directed to updating data. Appellant believes the Examiner and the Board are ignoring claim language. Thus, Bowman-Amuah does not disclose all of the limitations of claim 11, and thus Bowman-Amuah does not anticipate claim 11. M.P.E.P. §2131.

J. Claim 12 is not anticipated by Bowman-Amuah.

As discussed in Appellant's Second Appeal Brief, the Examiner cites column 11, lines 1-5 and 40-42; column 16, lines 25-38; and column 16, line 51 – column 17, line 20 of Bowman-Amuah as disclosing "wherein said processing said first request comprises updating profile of said development environment, wherein said profile of said development environment comprises a description of said hardware components and said software components of said development environment, wherein said profile of said development environment comprises a description of said software application to be developed" as recited in claim 12. Appellant's Second Appeal Brief, page 19. Appellant pointed out that Bowman-Amuah taught standards that specify what the results should look like and should focus on what must be common, and should not become a goal in themselves. *Id.* Appellant pointed out, for example, that the cited passages do not disclose a profile of such a development environment that includes a description of a software application to be developed. *Id.* at page 20. The Board states that it equates "change control" with "governs what software component is changed." Board's Decision, page 19. What is the rational connection between this

statement and the above-cited claimed limitations? These claim limitations are not simply directed to updating data. Appellant believes the Examiner and the Board are ignoring claim language. Thus, Bowman-Amuah does not disclose all of the limitations of claim 12, and thus Bowman-Amuah does not anticipate claim 11. M.P.E.P. §2131.

K. Claims 13-14, 24-25, 35-36 and 46-47 are not anticipated by Bowman-Amuah.

The Board asserts that the limitations of claims 13-14, 24-25, 35-36 and 46-47 are non-functional descriptive material and therefore carries no patentable weight. Board's Decision, pages 20-22. By the Board concluding that these limitations carry no patentable weight, the Board ignores these limitations and concludes that Appellant has failed to demonstrate that the Examiner has erred. Board's Decision, pages 21-22.

The limitation of receiving a second request, wherein said second request comprises a request to implement a change in said development environment," as recited in claim 13 and similarly in claims 24, 35 and 46, and the limitation of "receiving a second request, wherein said second request comprises a request to correct a problem detected in said development environment," as recited in claim 14 and similarly in claims 25, 36 and 47, are not non-functional descriptive material. These limitations are not related to music, literary works, a mere arrangement of data, or an abstract idea. See M.P.E.P. §2106.01. For example, a "change request" comprises a description of the change in the development environment to be implemented. Appellant's Specification, page 9, lines 10-12. Further, another such request may be referred to as a "problem report" which may comprise a description of a problem in the development environment to be corrected. Appellant's Specification, page 9, lines 12-14. Do not these limitations have a functional aspect to them, namely, a request to implement a change in the development environment and a request to correct a problem detected in the development environment? How do these limitations "bear no functional relationship to the substrate?"

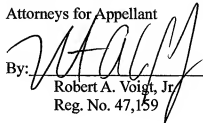
Claims 13-14, 24-25, 35-36 and 46-47 are not non-functional descriptive material and therefore carries patentable weight. Bowman-Amuah does not disclose all of the limitations of claims 13-14, 24-25, 35-36 and 46-47, and thus Bowman-Amuah does not anticipate claims 13-14, 24-25, 35-36 and 46-47. M.P.E.P. §2131.

For at least the reasons noted above, Appellant respectfully requests the Board to overrule the Examiner's rejections of the claims discussed above.

Respectfully submitted,

WINSTEAD P.C.

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